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No. 89-1728

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

WESTERN FUELS-UTAH, INC.,

Petitioner,

v.

MANUEL LUJAN, SECRETARY, UNITED STATES DEPARTMENT OF THE INTERIOR,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITIONER'S REPLY BRIEF

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INTRODUCTION

This brief responds to the Government's attempted rebuttal (Resp. Br. 10-11) of Petitioner's argument that Interior's varying interpretations of the term "at the end of" preclude *Chevron* deference to that term as used in Section 7 of the Mineral Lands Leasing Act, 30 U.S.C. § 207, relating to coal.

ARGUMENT

The Government and Petitioner agree that this case presents the question of the propriety of *Chevron* deference (*Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984)) to the Secretary's interpretation of "at the end of" in Section 7 of the Mineral Lands Leasing Act. Pet. i; Resp. Br. in Opp. (i). The Government does not dispute the proposition that consistency of agency application is an essential prerequisite for *Chevron* deference. Pet. 20. Yet it argues that it is of no moment that the Secretary applies the identical phrase, "at the end of," in the provisions of the Mineral Lands Leasing Act relating to phosphate, 30 U.S.C. § 212, potassium (potash), 30 U.S.C. § 283, and gilsonite, 30 U.S.C. § 241, differently (and in the manner Petitioner contends it should be interpreted in relation to coal) from the way he applies it in the case of coal. The only support the Government offers is that the "statutes" in which the common term is embodied "vary in a number of other respects." Hence, according to the Government, "at the end of" is susceptible of differing interpretations. Resp. Br. 10-11. It offers no explanation why "other differences" between "the different statutes" justify differing interpretations of the common phrase.

The fact is that each of the statutory provisions the Government styles "separate" is a part of the Mineral Lands Leasing Act.

The "at the end of"[2] adjustment provision for coal and phosphate has been included in the Act from its inception in 1920. *See* Act of February 25, 1920, 41 Stat. 437, §§ 7, 11.

Potassium (Potash), originally the subject of a separate leasing statute enacted as a war measure in 1917 (Act of October 2, 1917, 40 Stat. 297), when general leasing legislation was not yet considered timely for enactment, was brought under the 1920 act by the Act of February 7, 1927 (44 Stat. 1057). The 1927 act was proposed by the Department of the Interior in order, among other things, to eliminate lack of uniformity between the 1917 act and the minerals covered by the 1920 act "by bringing potassium essentially under the provisions of the general leasing law." *See* letter of December 9, 1925 from Interior Secretary Work to Chairman, House Committee on Public Lands, *reprinted in* S. Rep. No. 1274, 69th Cong., 2d Sess. 1, 2 (1927).

As enacted in 1927 the potassium act did not provide for leases of indeterminate length. Instead it provided that, unless otherwise provided by law at the expiration of such periods, leases should be for 20 years with a right of renewal in the lessee for successive periods of 10 years upon such reasonable terms and conditions as might be prescribed by the Secretary. By section 9 of the Act of June 3, 1948, (which originated in the House Public Lands Committee) that provision was replaced by what is now the second sentence of 30 U.S.C. § 283—the "at-the-end-of" formulation. In favorably reporting the leg- 62 STAT. 292,

islation, the House Committee on Public Lands explained that the change was included to give potash leases the same treatment relative to renewals as was provided for oil and other mineral leases. H. R. Rep. No. 1541, 80th Cong., 1st Sess. 4 (1948). By way of further explanation, the Committee included the Interior Department's report. The departmental report explained that changing from a lessee's option to renew to a lease for an indeterminate term would eliminate "a great deal of unnecessary paper work." "[A] simple decision, authorizing readjustment at the end of each 20-year period, will avoid the now necessary time-consuming actions required in the adjudication of renewal lease applications or in the drafting of renewal leases." Letter of June 9, 1947, from the Acting Secretary of the Interior to Chairman, House Committee on Public Lands, *reprinted in* H. R. Rep. No. 1541, *supra*, at 4, 6.

Gilsonite was originally brought under § 21 of the Mineral Lands Leasing Act (30 U.S.C. § 241) by a 1960 amendment applicable to "native asphalt, solid and semisolid bitumen, and bituminous rock" (Act of September 2, 1960, § 7, 74 Stat. 790). By a 1981 amendment (Act of Nov. 16, 1981, § 1(1), 95 Stat. 1070), the term "gilsonite" was substituted for the longer description. Section 21 from its inception in 1920 (prior to 1960 it embraced only oil shale) has provided for leases of indeterminate length "subject to readjustment [of royalties] at the end of each 20 year period by the Secretary of the Interior." Act of February 25, 1920, *supra*, § 21.

To be sure, the treatment in the Mineral Lands Leasing Act of coal, phosphate, potassium and gilsonite differ in some other respects (*e.g.*, acreage lim-

itations, specified royalties and rentals) but there is nothing in such differences which can warrant or justify different interpretations of the common phrase "at the end of." All of these minerals are subjects of the Mineral Lands Leasing Act and are covered by general provisions of that Act. *See, e.g.*, §§ 1, 29, 30, 31(a) and (c), 32, 33, 35, 37 and 39, as amended (30 U.S.C. §§ 181, 186, 187, 188(a) and (c), 189, 190, 191, 193 and 209). *See also* 30 U.S.C. § 188a. And as the legislative history of the potassium provision suggests, Congress' aim, like that of Interior itself, was to facilitate uniformity and to simplify the process of lease readjustment. *See* Interior letters of December 9, 1925 and June 9, 1947, *supra*.

CONCLUSION

It is clear that the Government's attempt to rationalize differing interpretations of the common phrase based on the proposition that the minerals are leased under "different statutes" is chimerical and that the Secretary's interpretation of "at the end of" as applied to coal leases, which conflicts with his interpretation of the phrase as applied to all other leases subject to such readjustments under the Act, is not entitled to deference.

Respectfully submitted,

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